

## Article 32.

### Public Officers and Employees Liability Insurance Commission.

#### **§ 58-32-1. Commission created; membership.**

There is hereby created within the Department a Public Officers and Employees Liability Insurance Commission. The Commission shall consist of 11 members who shall be appointed as follows: the Commissioner shall appoint six members as follows: two members who are members of the insurance industry who may be chosen from a list of six nominees submitted to the Commissioner by the Independent Insurance Agents of North Carolina, Inc.; one member who is employed by a police department who may be chosen from a list of three nominees submitted to the Commissioner jointly by the North Carolina Police Chiefs Association and North Carolina Police Executives Association, and one member who is employed by a sheriff's department who may be chosen from a list of three nominees submitted to the Commissioner by the North Carolina Sheriff's Association; one member representing city government who may be chosen from a list of three nominees submitted to the Commissioner by the North Carolina League of Municipalities; and one member representing county government who may be chosen from a list of three nominees submitted to the Commissioner by the North Carolina Association of County Commissioners; and the General Assembly shall appoint two persons, one upon the recommendation of the Speaker of the House of Representatives, and one upon the recommendation of the President Pro Tempore of the Senate. The Commissioner or the Commissioner's designate shall be an ex officio member. Appointments by the General Assembly shall be made in accordance with G.S. 120-121, and vacancies in those appointments shall be filled in accordance with G.S. 120-122. The terms of the initial appointees by the General Assembly shall expire on June 30, 1983. The Secretary of the Department of Public Safety or the Secretary's designate shall be an ex officio member. The Attorney General or the Attorney General's designate shall be an ex officio member. One insurance industry member appointed by the Commissioner shall be appointed to a term of two years and one insurance industry member shall be appointed to a term of four years. The police department member shall be appointed to a term of two years and the sheriff's department member shall be appointed to a term of four years. The representative of county government shall be appointed to a term of two years and the representative of city government to a term of four years. Beginning July 1, 1983, the appointment made by the General Assembly upon the recommendation of the Speaker shall be for two years, and the appointment made by the General Assembly upon the recommendation of the President Pro Tempore of the Senate shall be for four years. Except as provided in this section, if any vacancy occurs in the membership of the Commission, the appointing authority shall appoint another person to fill the unexpired term of the vacating member. After the initial terms established herein have expired, all appointees to the Commission shall be appointed to terms of four years.

The Commission members shall elect the chair and vice-chair of the Commission. The Commission may, by majority vote, remove any member of the Commission for chronic absenteeism, misfeasance, malfeasance or other good cause. (1979, c. 325, s. 1; 1981 (Reg. Sess., 1982), c. 1191, ss. 24-26; 1983, c. 543, ss. 1, 2; 1985, c. 666, ss. 76, 77, 79; 1991, c. 720, s. 4; 1995, c. 490, s. 41; 1999-132, s. 6.1; 2011-145, s. 19.1(g).)

#### **§ 58-32-5. Meetings of Commission; compensation.**

The Commission shall meet at least four times per year, on or about January 15, April 15, July 15, October 15 and upon call of the chairman. The members shall receive no compensation for

attendance at meetings, except a per diem expense reimbursement. Members of the Commission who are not officers or employees of the State shall receive reimbursement for subsistence and travel expenses at rates set out in G.S. 138-5 from funds made available to the Commission. Members of the Commission who are officers or employees of the State shall be reimbursed for travel and subsistence at the rates set out in G.S. 138-6 from funds made available to the Commission. (1979, c. 325, s.1; 1981 (Reg. Sess., 1982), c. 1191, s. 27; 1985, c. 666, s. 79.)

**§ 58-32-10. Powers and duties of Commission.**

The Commission may acquire from an insurance company or insurance companies a group plan of professional liability insurance covering the law-enforcement officers and/or public officers and employees of any political subdivision of the State. The Commission has full authority to negotiate with insurance companies submitting bids or proposals and shall award its group plan master contract on the basis of the company or companies found by it to offer maximum coverage at the most reasonable premium. The Commission may enter into a master policy contract of any term that it finds to be in the best interests of the law-enforcement officers and/or public officers and employees of the political subdivisions of the State, not to exceed five years. The Commission, in negotiating for the contract, is not authorized to pledge or offer the credit of the State of North Carolina. The insurance premiums shall be paid by the political subdivisions whose employees are covered by the professional liability insurance. Any political subdivision may elect coverage for any or all of its employees on a departmental basis. All employees in a department must be covered if coverage is elected for that department. Nothing in this section requires any political subdivision to participate in any group plan of professional liability insurance.

The Commission may, in its discretion, employ professional and clerical staff whose salaries shall be as established by the State Human Resources Commission.

If the Commission determines that reasonable coverage is not available at a reasonable cost, the Commission may undertake any studies and inquiries into the situation and alternatives, including self-insurance and State-administered funds, that the Commission deems appropriate. The Commission shall then bring before the General Assembly any recommendations that it deems appropriate.

The Commission may acquire information regarding loss ratios, loss factors, loss experience, and other such facts and figures from any agency or company issuing professional liability insurance covering public officers, employees, or law-enforcement officers in this State. This information is not a public record within the meaning of Chapter 132 of the General Statutes where it names the company divulging the information, but the Commission may make public the information to show aggregate statistics in respect to the experience of the State as a whole. The information shall be provided to the Commission upon its written demand and shall be submitted to the Commission by the company or companies upon sworn affidavit. If any agency or company fails or refuses to supply the information to the Commission within a reasonable time following receipt of the demand, the Commission may apply to the Superior Court sitting in Wake County for appropriate orders to enforce the demand.

For purposes of this section, the term "political subdivision" includes any county, city, town, incorporated village, sanitary district, metropolitan water district, county water and sewer district, water and sewer authority, hospital authority, parking authority, local ABC board, special airport district, airport authority, soil and water conservation district created pursuant to G.S. 139-5, fire district, volunteer or paid fire department, rescue squad, city or county parks and recreation commission, area mental health board, area mental health, developmental disabilities, and

substance abuse authority as described in G.S. 122C-117, domiciliary home community advisory committee, county or district board of health, nursing home advisory committee, county board of social services, local school administrative unit, local board of education, community college, and all other persons, bodies, or agencies authorized or regulated by Chapters 108A, 115C, 115D, 118, 122C, 130A, 131A, 131D, 131E, 153A, 160A, and 160B of the General Statutes. (1979, c. 325, s. 1; 1983, c. 543, s. 3; 1985, c. 666, s. 79; 1985 (Reg. Sess., 1986), c. 1027, s. 30; 1987, c. 564, s. 9; 2013-382, s. 9.1(c); 2018-47, s. 6(a).)

**§ 58-32-15. Professional liability insurance for State officials.**

(a) The Commission may acquire professional liability insurance covering the officers and employees, or any group thereof, of any State department, institution or agency or any community college or technical college. Premiums for such insurance shall be paid by the requesting department, institution, agency, community college or technical college at rates established by the Commission, from funds made available to such department, institution, agency, community college or technical college for the purpose.

(b) The Commission, pursuant to this section, may acquire professional liability insurance covering the officers and employees, or any group thereof, of a department, institution or agency of State government or a community college or technical college only if the coverage to be provided by the insurance policy is in excess of the protection provided by Articles 31 and 31A of Chapter 143 of the General Statutes, other than the protection provided by G.S. 143-300.9.

(c) The purchase, by any State department, institution, agency, community college or technical college of professional liability insurance covering the law-enforcement officers, officers or employees of such department, institution, agency, community college or technical college shall not be construed as a waiver of any defense of sovereign immunity by such department, institution, agency, community college or technical college. The purchase of such insurance shall not be deemed a waiver by any employee of the defense of sovereign immunity to the extent that such defense may be available to him.

(d) The payment, by any State department, institution, agency, community college or technical college of funds as premiums for professional liability insurance through the plan provided herein, covering the law-enforcement officers or officials or employees of such department, institution, agency, community college or technical college is hereby declared to be for a public purpose. (1981, c. 1109, s. 3; 1985, c. 666, s. 79; 1987, c. 301; 1991, c. 674, s. 3.)

**§ 58-32-20. Commission to act as liaison; meetings of Commission.**

The Commission shall act as liaison between the insurance company or companies with which it contracts, their servicing agent and the insureds. The Commission shall give notice of its meetings to the company or companies and to all insureds. The Commission shall attempt to resolve such difficulties as arise in the servicing and administration of the program of insurance between the company and insureds. (1979, c. 325, s. 1; 1985, c. 666, s. 79.)

**§ 58-32-25. Contract conditions.**

The Commission, in procuring and negotiating for the contract of insurance herein described shall include in any procurement document the following conditions, which are not subject to negotiation and which are deemed a part of the said contract when entered into:

- (1) The master policy shall be issued in the name of the Commission and shall include all governmental entities for which coverage was requested in the procurement document.
- (2) The company or companies selected must name a servicing agent resident in North Carolina who shall issue all certificates, collect all premiums, process all claims, and be responsible for all processing, service and administration of the program of insurance provided. (1979, c. 325, s. 1; 1985, c. 666, s. 79.)

**§ 58-32-30. Payment a public purpose.**

The payment by any county or municipality of funds as premiums for professional liability insurance through the plan provided herein, covering the law-enforcement officers or public officials or employees of such subdivision of government, is declared to be for a public purpose. (1979, c. 325, s. 1; 1985, c. 666, s. 79.)